SINGAPORE REPORTS

NANYANG GUM BENJAMIN MANUFACTURING (PTE) LTD. v. TAN TONG WOO & ORS.

[C.A. (Wee Chong Jin C.J., Chua and Rajah JJ.) November 16, 1977]

[Singapore — Civil Appeal Nos. 40, 41 & 42 of 1977]

Practice and Procedure — Jurisdiction — Action for possession — Issue of whether premises controlled premises — Whether court had jurisdiction to grant order for possession.

Landlord and Tenant — Action for possession — Jurisdiction — Control of Rent Act (Cap. 266).

In an action for possession where it is in issue that the premises subject matter of the action may or may not be controlled premises, the court has no jurisdiction to grant an order for possession unless the facts are placed before the court. The court must be satisfied that it has jurisdiction under the proper sections or paragraphs contained in the Control of Rent Act (Cap. 266) to grant an order for possession.

Cases referred to:-

(1) *Barton & Anor.* v. *Fincham* [1921] All E.R. Rep. 87.

(2) *Thorne* v. *Smith* [1947] 1 All E.R. 39.

(3) *Peachey Property Corporation Ltd.* v. *Robinson* [1966] 2 All E.R. 981.

CIVIL APPEAL.

K.E. Hilborne for the appellants.

T.G. Dunbar (*Karuppan Chettiar* with him) for the respondents.

Wee Chong Jin C.J. (delivering oral judgment of the Court): The position is this, there are 3 appeals. In Appeal No. 42 an application was made to the High Court to amend the Summons-in-Chambers by substituting a new party, Elite Holding Private Ltd. as a party in place of the three respondents originally named. During the hearing of this appeal and the two other connected appeals, the appellants have applied to add Elite Holding Private Ltd. as the 4th respondent and we have allowed that application. So, so far as Civil Appeal No. 42 of 1977 is concerned we make no order on it.

The other two appeals which we have heard today are Appeals No. 40 and No. 41. Now, it is conceded that the applications in these two appeals ask for identical reliefs — one to restrain by injunction and the other a stay of execution on the writ of possession.

There is a related matter which is before the High Court and which has not been decided and that is an action by the present appellants against all the present four respondents in these two appeals to set aside the judgment obtained by the first three respondents in the District Court as long ago as 1973. The present two appeals are concerned with a writ of possession ordered by the District Court on the judgment which is now the subject matter of the High Court action.

We propose to decide the matters before us in relation to Appeal No. 41 which asks for a stay of execution on the writ of possession granted by the District Court in June this year. The application for stay was refused by the High Court and the present appeal is against that refusal. Two grounds are urged in support of the appeal. The first is that the judgment for possession obtained in 1973 was a nullity on the ground that the District Court had no jurisdiction to make an order for possession because of the provisions of the Control of Rent Act. The contention is based on a line of cases beginning with the case of *Barton & Anor.* v. *Fincham*[1] decided by an English Court of Appeal as long ago as 1931 and followed by the English courts in the case of *Thorne* v. *Smith*,[2] *Peachey* v. *Robinson*[3] etc.

We accept the reasoning of the English court that in an action for possession where it is in issue that the premises the subject matter of the action may or may not be controlled premises, the court has no jurisdiction to grant an order for possession unless the facts are placed before the court. The court must be satisfied that it has jurisdiction under the proper sections or paragraphs contained in our Act to grant an order for possession. On the facts of the action before the District Court in 1973 it is clear that the question whether or not the premises in question were controlled premises was in issue and the consent judgment was obtained without prejudice to the position taken by both parties — plaintiffs as well as the defendants — one alleging that the premises were not controlled, the other alleging that they were. The consent judgment was for possession of the premises to be surrendered years later.

Now, that being the basis on which the writ of possession was issued we are satisfied that the original judgment was a nullity. The application for stay of execution on the writ of possession must accordingly be granted. The High Court action instituted by the present appellants against the present four respondents, we are told in Suit No. 1925 of 1977, has not been finally decided.

As regards the appeal in Appeal No. 40, as the same relief is asked for, we will make no order on this appeal.

We now come to the question of costs. We think enough has been said during the hearing of these proceedings and, having regard to the fact that it was only at this late stage that the 4th respondent was added in as a party to this appeal including the proceedings out of which these appeals arise, that the proper orders would be that each party should bear its own costs here and in the court below.

No order made as to Appeal Nos. 40 & 42. Application for stay of execution granted in Appeal No. 41.

Solicitors: *Hilborne & Co.; Murphy & Dunbar.*